IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A. O. NO. 745 OF 2006

Mr. Sudhakar Dwarkanath Kadam & 2 ors. ... Appellants
VS.
Mukund Hari Mhatre & ors. ... Respondents

Mr. P. N. Karlekar for appellants.
Mr. U. P. Warunjikar for respondent nos. 1 to 6.

CORAM: D. G. KARNIK **J.**
DATE: November 29, 2006

P.C.:

1. Heard learned counsel for the appellants.

2. This appeal arises out of the judgment and order dated 17.7.2006 passed by the 3rd Ad hoc Additional Sessions Judge, in Special Civil Suit no. 124 of 2006 filed by the appellants for the relief of specific performance of the agreement of sale dated 21st January 1975 and 16th October 1983 and for other reliefs. In the suit the appellants claimed injunction restraining the respondents from disturbing their possession. The trial court rejected the application. This appeal is directed against that order.

3. In the plaint itself the appellants have averred that they had previously filed a suit bearing R.C.S. No.323 of 1993 in the

court of Civil Judge, Junior Division, Vasai, for specific performance of the agreement of sale and on 23rd July 1999 and the suit was dismissed. The appellants have alleged that the suit was dismissed under Order 9 rule 3 of the Civil Procedure Code and therefore the present suit maintainable under Order 9 Rule 4.

4. The previous suit was filed for specific performance on accrual of cause of action. Therefore the period of limitation would begin to run from the date of the accrual of the cause of action in the previous suit which is admittedly prior to the year 1993. The present suit has been filed in the year 2006, that is, after lapse of 13 years from the accrual of cause of action. The present suit is therefore prima facie barred by limitation. In that view of the matter the appellant is not entitled to an injunction.

5. Learned counsel for the appellant relied upon a decision of the Supreme Court in Gunwantbhai Mulchand Shah vs. Anton Elis Farel reported in 2006(3) All. M.R. 85. That was the case where the suit itself was dismissed holding that it was barred by limitation. The present appeal is not against the order of dismissal of the suit but against the order of refusal of temporary injunction. Under Order 9A of the Civil Procedure Code the court finally decides the question of jurisdiction and the decision is final , whereas in the present case the decision is not final but the court is only required to

consider whether the plaintiff has made out good prima facie case so as to entitle him to a relief of injunction.

6. In Shri **Shiv Kumar Chadha vs. Delhi Municipal Corporation & ors.**, reported in (1993) 3 SCC 161 the Supreme Court has laid down that for grant of an injunction the court is required to be satisfied that the plaintiff has a strong prima facie case including on the question of maintainability of the suit. Thus for entitlement of a relief of injunction the plaintiff must show prima facie that he is likely to succeed in the suit, including on the question of limitation. Since in the present case the appellant has not prima facie shown that the suit is within limitation he is not entitled to the relief of injunction. For these reasons the appeal is dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil application no. 1012 of 2006
in
A. O. NO. 745 OF 2006

Mr. Sudhakar Dwarkanath Kadam & 2 ors. ... Appellants
VS.
Mukund Hari Mhatre & ors. ... Respondents

Mr. P. N. Karlekar for appellants.
Mr. U. P. Warunjikar for respondent nos. 1 to 6.

CORAM: D. G. KARNIK **J.**
DATE: November 29, 2006

P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)